

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

SPORTS SHINKO CO., LTD., a
Japan corporation,

Plaintiff,

vs.

QK HOTEL, LLC, a Hawaii limited
liability company, et al.,

Defendants,

and

FRANKLIN K. MUKAI, et al.,

Third-Party Plaintiffs,

vs.

SPORTS SHINKO (USA) CO., LTD.,
a Delaware Corporation, et al.

AND CONSOLIDATED CASE

CV 04-00124 BMK

CV 04-00127 BMK

CONSOLIDATED CASES

DECLARATION OF
ROBERT A. MARKS

DECLARATION OF ROBERT A. MARKS

Pursuant to 28 U.S.C. § 1746, ROBERT A. MARKS states as follows:

1. I am an attorney licensed to practice law before this Court.
2. I am counsel for Defendants, Counterclaimants, and Third-Party Plaintiffs KG HOLDINGS, LLC, KIAHUNA GOLF CLUB, LLC, KG KAUAI DEVELOPMENT, LLC, PUKALANI GOLF CLUB, LLC, KG MAUI DEVELOPMENT, LLC, MILILANI GOLF CLUB, LLC, QK HOTEL, LLC, and OR HOTEL, LLC.

3. Attached and marked Exhibit 8 is a true and correct copy of excerpts from the official transcript of proceedings in this litigation held before the Honorable Alan C. Kay on March 20, 2006.

4. Attached and marked Exhibit 9 is a true and correct copy of excerpts from The Goldman Sachs Group, Inc.'s Form 10-K filed with the Securities and Exchange Commission for the year ending November 24, 2006. The foregoing is a business record of Goldman Sachs that was obtained from the Goldman Sachs website at: http://www2.goldmansachs.com/our_firm/investor_relations/financial_reports/docs/2006_Form_10-K.pdf.

5. Attached and marked Exhibit 10A are true and correct copies of excerpts from the 2004 Hawaii Tax Return filed by Sports Shinko (USA) Co., Ltd. and subsidiaries ("SS-USA"). Upon information and belief, this document is a business record of the plaintiff or one of the Sports Shinko parties. This document was produced pursuant to subpoena by Grant Thornton, LLP, the accountant for SS-USA.

6. Attached and marked Exhibit 11A are true and correct copies of excerpts from the 2005 federal tax return filed by SS-USA. Upon information and belief, this document is a business record of the plaintiff or one of the Sports Shinko parties. This document was produced pursuant to subpoena by Grant Thornton, LLP, the accountant for SS-USA.

7. Attached and marked Exhibit 11B are true and correct copies of excerpts from the 2005 Hawaii tax return filed by SS-USA. Upon information and belief, this document is a business record of the plaintiff or one of the Sports Shinko parties. This document was produced pursuant to subpoena by Grant Thornton, LLP, the accountant for SS-USA.

8. Attached and marked Exhibit 12A are true and correct copies of excerpts from the 2006 federal tax return filed by SS-USA. Upon information and belief, this document is a business record of the plaintiff or one of the Sports Shinko parties. This document was produced pursuant to subpoena by Grant Thornton, LLP, the accountant for SS-USA.

9. Attached and marked Exhibit 12B are true and correct copies of excerpts from the 2006 Hawaii tax return filed by SS-USA. Upon information and belief, this document is a business record of the plaintiff or one of the Sports Shinko parties. This document was produced pursuant to subpoena by Grant Thornton, LLP, the accountant for SS-USA.

10. Attached and marked Exhibits 13A is a true and correct copy of a promissory note made by OR Hotel LLC payable to Sports Shinko (Waikiki) Corporation. This exhibit is a business record kept by KG Holdings, LLC that was produced in discovery in this litigation.

11. Attached and marked Exhibits 13B is a true and correct copy of a promissory note made by QK Hotel LLC payable to Sports Shinko (Waikiki) Corporation. This exhibit is a business record kept by KG Holdings, LLC that was produced in discovery in this litigation.

12. Attached and marked Exhibits 13C is a true and correct copy of a promissory note made by Pukalani Golf Club, LLC payable to Sports Shinko (Pukalani) Co., Ltd. This exhibit is a business record kept by KG Holdings, LLC that was produced in discovery in this litigation.

13. Attached and marked Exhibits 13D is a true and correct copy of a promissory note made by Mililani Golf Club, LLC payable to Sports Shinko (Mililani) Co., Ltd. This exhibit is a business record kept by KG Holdings, LLC that was produced in discovery in this litigation.

14. Attached and marked Exhibits 13E is a true and correct copy of a promissory note made by Kiahuna Golf Club, LLC payable to Sports Shinko (Kauai) Co., Ltd. This exhibit is a business record kept by KG Holdings, LLC that was produced in discovery in this litigation.

15. Attached and marked Exhibit 14 is a true and correct copy of a memo to file prepared by Hongchay Vixaysack of Grant Thornton, LLP dated September 16, 2005. This document was produced pursuant to subpoena by Grant Thornton, LLP, the accountant for SS-USA.

16. Attached and marked Exhibit 15 is a true and correct copy of an e-mail exchange between various employees of Grant Thornton LLP and various individuals acting on behalf of SS-USA bearing various dates in late August through early September 2005. This document was produced pursuant to subpoena by Grant Thornton, LLP, the accountant for SS-USA.

17. Attached and marked Exhibit 16 is a true and correct copy of an e-mail exchange between various employees of Grant Thornton LLP and various individuals acting on behalf of SS-USA bearing the date of November 5, 2004. This document was produced pursuant to subpoena by Grant Thornton, LLP, the accountant for SS-USA.

18. Attached and marked Exhibit 17 is a true and correct copy of a CD that contains various Excel files that contain the general ledgers of various Sports Shinko parties. This CD was produced in the litigation by the plaintiff. Upon information and belief, the data on this disk is a business record of the plaintiff and/or other Sports Shinko parties.

19. Attached and marked Exhibit 18 is a true and correct copy of excerpts from the declaration of Toshio Kinoshita dated August 8, 2006. The original of this declaration was filed in the record of proceedings in the Circuit Court of the Second Circuit, State of Hawaii, in a case captioned KG Holdings, LLC, et al., v. Sports Shinko (Hawaii) Co., Ltd., Civil No. 06-1-0233(1) on September 22, 2006

as an exhibit to plaintiffs' motion for summary judgment. That case is now pending appeal before the Intermediate Court of Appeals of the State of Hawaii as Case No. 28572. The KG Parties ask the Court to take judicial notice of this declaration.

20. Attached and marked Exhibit 19 is a true and correct copy of excerpts from the declaration of Steven Iwamura filed in the record of this case on January 25, 2007 by the Sports Shinko Parties as an attachment to their memorandum in opposition to the KG Parties' Motion to Dismiss CV Nos. 04-00125 ACK-BMK, 04-00126 ACK-BMK and 04-00128 ACK-BMK for lack of subject matter jurisdiction. The declaration was filed on January 25, 2007. The KG Parties ask the court to take judicial notice of this exhibit. The last page of Exhibit 19 is comprised of a true and correct copy of a document produced pursuant to subpoena by Grant Thornton, LLP, the accountant for SS-USA.

21. The documents that comprise exhibits C2, C3, C4, C5 that bear a bates number with the prefix "GT" are true and correct copies of documents that were produced pursuant to subpoena by Grant Thornton, LLP, the accountant for SS-USA. The documents that comprise exhibits C2, C3, C4, C5 that bear a bates number with the prefix "266" are true and correct copies of documents that were produced by plaintiff in this litigation. Upon information and belief, these documents are the business records of plaintiff or one of the Sports Shinko parties.

Exhibits C-2.1 and C-3.1 are compilations of data that have been extracted from Exhibit 17, as set forth in the Declaration of Michael A. Cohan.

22. Exhibit E-2 is comprised of true and correct copies of documents produced by plaintiff in this litigation. Upon information and belief, these documents constitute business records of plaintiff or one of the Sports Shinko parties.

23. Exhibits 8-19 and exhibits C2, C3, C4 and C5 have been highlighted as provided by Rule 56.1(c) of the Rules of the United States District Court for the District of Hawaii.

24. Exhibits 10A, 11A, 12A, 12B, 14, 15, 16, 17, 19, C-2, C-3, C-4, C-5 and part of Exhibit 19 consist of, or are derived from, documents that have been marked “confidential” by the Sports Shinko parties pursuant to the Amended Stipulated Protective Order filed herein on April 10, 2007 (“SPO”). The declarations of Michael A. Cohan and Roger H. Epstein contain “confidential information” within the meaning of the SPO. Pursuant to ¶ 8 of the SPO, plaintiff has the burden to show that it is proper for these exhibits to be filed under seal. I will arrange for copies of the foregoing exhibits to be submitted to the chambers of the Court and the parties pursuant to the SPO.

I declare under penalty of perjury that the foregoing is true and correct.

Executed at Honolulu, Hawaii, October 19, 2007.

/s/ Robert A. Marks
ROBERT A. MARKS